

Appl. No. 10/743,242  
Amdt. dated Feb. 6, 2006  
Reply to Office Action of Oct.. 5, 2005

### **REMARKS/ARGUMENTS**

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

#### **Restriction Election**

In response to the restriction requirement made by way of the Office Action mailed October 5, 2005 and the provisional election made during a telephone conversation with the Examiner on September 27, 2005, Applicants hereby affirm the election of the Group I claims to be prosecuted by way of the present application. That is, Applicants elect claims 1 - 11 for prosecution in the present application.

This election is made **without traverse**. Applicants specifically reserve the right to seek patent protection for non-elected subject matter by divisional application.

Claims 12 - 25 have been amended, pursuant to 37 CFR 1.121, to depend upon and contain all of the limitations of the material as described in Claims 1 -11. Subsequently, Applicants request Claims 12 - 25 be **rejoined** with Claims 1 - 11 upon finding allowable subject matter in Claims 1 - 11, in accordance with MPEP §821.04 . Applicants respectfully request that such amendments to Claims 12 - 25 be entered and that Claims 12 - 25 be withdrawn as required by the restriction requirement.

#### **In the Claims**

Claims 1 - 25 are presented for the Examiner's consideration, with Claims 12 - 25 being withdrawn as required by the restriction requirement discussed above.

Claims 1, 6, 12 and 17 have been amended to more clearly claim the "gatherable" nature of the nonwoven layer, or layers, of the embodiments of the present invention. Support for such amendments can be found in the specification at page 10, lines 18 - 24; page 18, lines 22 - 31; and page 25, lines 7 - 15. No new matter has been added.

Claim 6 has additionally been amended to affix a missing punctuation mark.

Claim 12 has been amended to depend upon Claim 1, in order for the method of Claim 12 to necessarily contain all of the limitations of Claim 1 and thus put the claim in proper form for rejoinder upon the finding of allowable subject matter in Claim 1.

Claims 19 and 20 have been amended to correct an obvious antecedent basis error.

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Claim 23 has been amended to correct an unintentional error that is obvious in view of its redundancy to claim 22. Such an amendment finds support in claims 8 and 9 as well as in the specification at page 20, line 22 to page 21, line 13. No new matter has been added.

**Regarding Examiner's Rejection for obviousness by Kauschke et al. in view of Welch et al.**

By way of the Office Action mailed October 5, 2005, Claims 1 – 11 stand as rejected under 35 U.S.C. § 103(a) as allegedly being obviousness by PCT Publication WO 01/012427 A1 to Kauschke et al. (hereinafter referred to as Kauschke) in view of PCT Publication WO 01/87589 A1 to Welch et al. (hereinafter referred to as Welch). This rejection is respectfully **traversed** to the extent that it may apply to the present claims.

Kauschke discloses a nonwoven having a plurality of bonding points giving the nonwoven a low tensile strength and high percent elongation in a first direction (the CD) and high tensile strength and low percent elongation in a second direction (the MD). As stated in the Office Action, Kauschke fails to teach the use of parallel elastomeric filaments to form a composite elastic material. Welch discloses a laminated article having elastic filaments, that provide elasticity to the article, and particular adhesive patterns that hold such filaments in place within the article.

Applicants respectfully submit that Kauschke in view of Welch cannot be properly combined and thus a *prima facie* case for obviousness cannot be established.

First, Kauschke and Welch teach two very different forms of composite elastic materials such that one skilled in the art would not look to combine such references. Kauschke discloses an elastic laminate formed by coating the nonwoven material by direct extrusion of a molten film-forming elastic polymer. As such, the nonwoven material maintains its dimensions after the lamination of the elastic polymer. The elongation of such an elastic laminate is dependent on the ability of the nonwoven material to stretch without breaking the filaments of the nonwoven materials or breaking the bonding points between elastic film and the nonwoven material (see page 15, line 7 – page 16, line 30).

In contrast, Welch teaches a composite elastic material formed by adhesively attaching stretched elastomeric filaments to a gatherable material. The elongation of such composite elastic laminates is determined by the extent that the gatherable material is gathered between bond locations, thus allowing the elastomeric filaments to elongate (page 8, lines 12 – 24 and Background).

As such, the laminates of Kauschke and Welch would not be considered as comparable to those skilled in the art. The composite elastic material of Welch will have the same type of ultimate

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failure as the material of Kauschke if extended too far (i.e., breaking of nonwoven filaments or delamination of the elastic material from the nonwoven substrate). However, the composite elastic material of Welch is initially gathered such that the total elongation of Welch material includes first extending the laminate back to the original dimensions of the nonwoven material and then extending the laminate in the same manner as in Kauschke. As such, the material of Welch will have a greater degree of total elongation Kauschke and will be presented in a gatherable form rather than the flat form of Kauschke.

While both the material of Welch and the material of Kauschke may be used in similar applications (i.e., diaper products), they are not the same materials. The materials are in different forms and will provide one skilled in the art with different sets of advantages and disadvantages. As such, one skilled in the art would not look one of these references to modify the other of these references. There is no motivation to combine the cited references.

**Second**, one skilled in the art would be dissuaded from combining the cited references as Kauschke specifically teaches away from the Welch in regard to the use of adhesives to form the elastic laminate. Kauschke teaches that the extrusion of the elastomeric film on to the nonwoven and teaches away from the use of adhesive to form the laminate due to the "danger inherent in the use of glue (which may seal the pores required for breathability of the composite 140)." (see page 15, lines 14 – 25 of Kauschke) As mentioned before, Welch is specifically directed to an efficient use of adhesives to form a composite elastic material.

As the elastic material taught by Kauschke encompasses a nonwoven material directly coated with an elastomeric material, one skilled in the art looking at the Kauschke reference would not be looking for an adhesive. In fact, Kauschke teaches one skilled in the art that adhesives should not be used. Therefore, there is no reason that one skilled in art would look to a reference teaching an adhesive pattern such as Welch and would be dissuaded from looking at any references forming a laminate with adhesives. As Kauschke **teaches away** from Welch, one skilled in the art would not look to combine such references.

**Third**, one skilled in the art would be dissuaded from combining the cited references as the combining of the teachings of both references would work against the purposes of either reference. The elastic laminates taught by the cited references are specifically designed to provide different types of stretch. Kauschke teaches high elongation in the CD of the material and low elongation in the MD of the material. Such a stretch profile is stressed as advantageous to use in diaper

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manufacturing while materials with high percent elongation in MD is specifically sited as undesired in the diaper art (see page 2, lines 1-8; page 5, lines 4 – 17; and page 16, lines 24 – 30).

In stark contrast, the composite elastic material of Welch has elastic filaments that are oriented in the MD (see Fig. 1). As discussed in the background and definitions of Welch, this MD-orientation will cause the stretched elastic filaments to gather the nonwoven substrates along the MD and subsequently allow for a high degree of elongation in the MD. The material will have a minimal degree of elongation in the CD as the filaments are primarily oriented in the MD.

Thus one skilled in the art trying to increase the CD elongation of an elastomeric material such as in Kauschke would not be motivated to look to an MD-elongating material such as taught by Welch. In fact, Kauschke actually teaches away from such high MD elongation materials (and in favor of high CD elongation materials) with regard to diaper manufacturing needs and the teachings of the “diaper art.”

Additionally, one skilled in the art would not look to combine the teaching of the cited references as the teaching effectively work against the desired properties of both references. The bonding pattern of the facings of Kauschke is designed to produce high elongation in the CD and low elongation in the MD. Meanwhile, the composite elastic material of Welch has its primary elongation in the MD with minimal elongation designed along the CD. The combination of such teachings would undesirably increase the MD elongation of the materials sought by Kauschke and would undesirably decrease the MD elongation of materials sought by Welch.

As such, one skilled in the art would not be motivated to combine such references, nor would the combination produce materials that either reference would find desirable.

At least for these reasons, the cited references can not be properly combined as there is no motivation to combine such references. Therefore, a *prima facie* case for obviousness cannot be established with regard to Kauschke in view of Welch. Accordingly, the obviousness rejection of Claims 1 – 11 under 35 U.S.C. §103(a) should be withdrawn.

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For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc.  
deposit account number 11-0875.

The undersigned may be reached at: (770) 587-8640.

Respectfully submitted,

HENDON ET AL.

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#### CERTIFICATE OF FACSIMILE TRANSMISSION

I, Nathan Hendon, hereby certify that on February 6, 2006, this document is being sent by facsimile to the United States Patent and Trademark Office, central facsimile number for all patent application related correspondence, at 571-273-8300.

By: 

Nathan Hendon